

PATENT**REMARKS**

Claims 1-3 are pending in the application. Claims 1-3 have been rejected.

Applicant respectfully responds to this Office Action.

Claim Rejections under 35 U.S.C. § 103

Claims 1-3 were rejected as being unpatentable over U.S. Patent 6,137,789 to Honkasalo (hereinafter "Honkasalo") in view of applicant's admitted prior art (AAPA). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure." In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that a *prima facie* case of obviousness has not been established regarding claims 1-3 because the prior art cited does not teach or suggest all the claim limitations. Specifically, the cited prior art does not disclose or suggest the limitation "transmitting said data at said rate during said time interval using one data transmission channel" as found in Applicants' invention.

Honkasalo is directed to a mobile station that is able to determine a required data rate based on data buffer usage. If the data buffer indicates a requirement for a high data rate transmission, the mobile station sends a request to a base station to be assigned multiple parallel code channels. (Abstract) The mobile station is enabled to autonomously control the data rate during an assigned period for high speed transmission, so as to lower the data rate when needed. (Abstract) The data rate is lowered by disabling transmission through at least one parallel code channel and subsequently resuming transmission when conditions warrant. (Abstract) In general a high speed data mobile station requests a number of parallel code channels based on information of how much data is stored in a transmit data buffer. Based on the mobile station's request, and the current interference condition in the network, the base station assigns a number

PATENT

of parallel code channels, up to a maximum number corresponding to the number requested by the mobile station, for a given period of time. The period of time is typically a network parameter, and is signaled to the mobile station explicitly from the base station. (Col. 5, lines 58-67) Once the multiple code channels are assigned, the mobile station sends data on all assigned code channels, until the transmit buffer is empty or until the mobile station transmitter has been commanded by the base station power control loop to increase the output power beyond the mobile station's output power limit. (Col. 6, lines 1-7)

Applicants respectfully submit that Honkasalo does not teach, disclose or suggest the stated claim limitations, "transmitting said data at said rate during said time interval using one data transmission channel" as found in Applicants' invention. Honkasalo teaches away from Applicants' invention because Honkasalo teaches and suggests multiple code channels. The Examiner states in the Office Action "However, Honkasalo may not specifically disclose that data is transmitted using one data transmission channel."

The Examiner states that the limitation "one data transmission channel" is disclosed by the Applicants' admitted prior art, IS-95. Applicants submit that it would not be obvious to combine the teachings of Honkasalo and the AAPA because the references themselves teach away from the combination. As noted above, Honkasalo teaches multiple parallel code channels. Applicants submit that the references are not suitable to combine and request that the rejection to claim 1 be withdrawn.

Claims 2 and 3 are each allowable as depending directly from allowable claim 1.

PATENT**REQUEST FOR ALLOWANCE**

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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By: Roberta Young
Roberta Young, Reg. No. 53,818
(858) 658-5803

QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, California 92121
Telephone: (858) 658-5102
Facsimile: (858) 658-2502